

STORAGE NAME: h1083.fs
DATE: March 5, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCIAL SERVICES
BILL ANALYSIS & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1083 (PCB FS 97-01)

RELATING TO: Uniform Commercial Code

SPONSOR(S): Committee on Financial Services, Representative Safley & others

STATUTE(S) AFFECTED: Chapters 610, 671, 674, 675, 578, 679, and 680, F.S.

COMPANION BILL(S):

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) FINANCIAL SERVICES YEAS 9 NAYS 0
- (2)
- (3)
- (4)
- (5)

I. SUMMARY:

The bill replaces the current provisions of Chapter 678, F.S., "Uniform Commercial Code-- Investment Securities" by:

- modernizing legislation to accommodate a system of securities holdings that is already in place;
- reflecting the current use of electronic filings; and
- setting forth duties and rights regarding "securities entitlements."

Additionally, the bill amends "Uniform Commercial Code -- Leases," Chapter 680, F.S., by:

- allowing a transfer of interest, by sublease or otherwise, unless the transfer is a material violation of the lease contract;
- giving preference to the lease agreement over a creditor unless the creditor's lien attached prior to the execution of the lease contract, the creditor has a security interest in the goods, the lessee did not pay value for the goods, and the lessee received the goods with knowledge of the security interest;
- allowing any party to agree to subordinate its own secured interest;
- allowing the party to collect those damages agreed upon in the lease contract as well as those remedies provided in the Chapter;
- revising the term "finance lease;"
- clarifying that the remedies in the event of a breach of the lease contract can only be imposed if the breach substantially impairs the value of the lease contract (the parties are also given the opportunity to set forth in the lease contract the types of defaults which give rise to the remedies contained in the Act); and,
- limiting the lessor's recovery to damages for the loss resulting in the ordinary course of events from the lessee's default, as well as incidental damages, less expenses saved as a result of the default, when the lessee's breach does not substantially impair the value of the lease contract.

The bill does not have a fiscal impact.

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II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

The UCC consists of eleven articles (General Provisions; Sales; Commercial Paper; Bank Deposits and Collections; Letters of Credit; Bulk Transfers; Warehouse Receipts, Bills of Lading and Other Documents of Title; Investment Securities; Secured Transactions, Sales of Accounts and Chattel Paper; Effective Date and Repealer; Effective Date and Transition Provisions). It was created to promote uniformity among the states in all phases of a commercial transaction. Such uniformity is intended to facilitate interstate trade.

Chapter 678, F.S.: In 1965, Chapter 678, F.S. was enacted to mirror Article 8 of the Uniform Commercial Code (UCC). Article 8 of the UCC and Chapter 678, F.S. set ground rules for securities transfers, and for resolving disputes that arise when different people claim conflicting interests in a security. Other laws under which the securities markets operate include the Securities Exchange Act of 1934 and Chapter 517, F.S.

Beginning in 1987, the National Conference of Commissioners on Uniform State Laws (NCCUSL), the American Law Institution, the American Bar Association, and the Florida Bar drafted, reviewed, and recommended proposed revisions to Article 8 of the UCC. The NCCUSL was organized in 1892 to promote uniformity in state commercial codes. The NCCUSL is composed of Commissioners from each state, the District of Columbia, and Puerto Rico. The commissioners include judges, lawyers, legislators, and law school professors. As of August 1996, the revisions to Article 8 had been adopted by 27 states, including Arizona, Arkansas, Idaho, Illinois, Louisiana, Minnesota, Nebraska, Oklahoma, Oregon, Texas, Washington, and West Virginia.

Chapter 680, F.S.: In 1987, Chapter 680, F.S. was enacted to mirror Article 2A of the UCC, which addresses leases. In 1990, the NCCUSL amended the original Article 2A in response to negative reactions to the original Article 2A by lessees, lessors, and their creditors. The criticism of the original Article 2A focused on the possibility of conflicting interpretations of Article 2A regarding whether a lessor's creditor has priority over a lessee or vice-versa; lessors' remedies under Article 2A; and the assertion that Article 2A was not clear concerning the ability of a lessor to grant a security interest in its leasehold interest and its residual interest.

Of the 44 states that adopted the original Article 2A of the UCC, only Florida and South Dakota have not adopted the amended provisions.

B. EFFECT OF PROPOSED CHANGES:

The amendments to Chapter 678, F.S., are meant to modernize legislation by dealing with a previously unaddressed, yet fully functional, system of securities holdings. The system uses securities intermediaries, such as broker-dealers, who hold the actual security certificates on behalf of the owners of the certificates. The amendments also reflect the increased use of electronic technology for the transfer of securities where the securities owner does not have physical possession of the security certificate.

Additionally, the bill makes substantive and technical changes to Chapter 680, F.S. The substantive changes include:

- (a) revising the term "finance lease;"
- (b) limiting the power to restrict assignments in a lease contract only to a transfer which is a material violation (when the lessor still has contractual duties to perform);
- © clarifying that the remedies in the event of a breach of the lease contract can only be imposed if the breach substantially impairs the value of the lease contract (the parties are also given the opportunity to set forth in the lease contract the types of defaults which give rise to the remedies contained in the Act);
- (d) giving preference to the lease agreement over a creditor unless: the creditor's lien attached prior to the execution of the lease contract, the creditor has a security interest in the goods, the lessee did not pay value for the goods, and the lessee received the goods with knowledge of the security interest;
- (e) allowing any party to agree to subordinate that party's secured interest; and,
- (f) allowing the party to collect those damages agreed upon in the lease contract as well as those remedies provided in the Chapter.

The proposed changes to Chapter 680, F.S., contained in this bill conform to the provisions of Article 2A as amended by the NCCUSL in 1990.

Please see the Section-by-Section analysis for specific changes regarding securities and leases.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A.

(3) any entitlement to a government service or benefit?

N/A.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

The bill supports individuals' right to contract in that it allows the parties to a lease agreement to determine through contract the events constituting a breach, and available damages and other remedies.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A.

- (2) Who makes the decisions?

N/A.

- (3) Are private alternatives permitted?

N/A.

- (4) Are families required to participate in a program?

N/A.

- (5) Are families penalized for not participating in a program?

N/A.

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

- (1) parents and guardians?

N/A.

- (2) service providers?

N/A.

- (3) government employees/agencies?

N/A.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Creates Part I of Chapter 678, F.S., consisting of ss. 678.1011, 678.1021, 678.1031, 678.1041, 678.1051, 678.1061, 678.1071, 678.1081, 678.1091, 678.1101, 678.1111, 678.1121, 678.1131, 678.1141, 678.1151, and 678.1161, F.S., as follows:

s. 678.1011, F.S.: Provides that the title of Chapter 678, F.S., is the "Uniform Commercial Code--Investment Securities."

s. 678.1021, F.S.: Sets forth the definitions of the Act.

s. 678.1031, F.S.: Provides definitions and rules for determining whether an interest is a security or financial asset, including giving examples of interests that do or do not qualify as different types of securities (e.g., investment company security does not include insurance policies; interest in a limited liability company is not security unless it is traded on securities exchanges or markets).

s. 678.1041, F.S.: Sets forth the ways in which security interests in securities and other financial assets are acquired under this Chapter.

s. 678.1051, F.S.: Establishes when a person has "notice of adverse claim(s)" to financial assets.

s. 678.1061, F.S.: Specifies the way purchasers can take control of certificated securities, uncertificated securities, and security entitlements.

s. 678.1071, F.S.: Sets forth the general rule that an indorsement, instruction, or entitlement order is effective if it is made by the “appropriate person,” and defines who would be the “appropriate person.”

s. 678.1081, F.S.: Sets forth the warranties given by security transferors to purchasers and to issuers. The section also sets forth the rules for presentment warranties.

s. 678.1091, F.S.: Sets forth the warranties provided when the originator of entitlement orders or of security certificates delivers the securities to intermediaries.

s. 678.1101, F.S.: Specifies which issues are governed by the law of the issuer’s jurisdiction, of the securities intermediary’s jurisdiction, or of the jurisdiction where the security certificate is located. Also specifies what qualifies as a jurisdiction of the issuer, intermediary, or certificate location.

s. 678.1111, F.S.: Provides that a rule adopted by a clearing corporation governing rights and obligations for it and its participants is effective even if the rule conflicts with this Chapter and affects another party that did not consent to the rule. The purpose of this is to keep the Chapter as flexible as possible in a changing marketplace.

s. 678.1121, F.S.: Sets forth the limits and abilities of creditors who attempt to levy against the securities of debtors, as well as the creditors’ legal avenues.

s. 678.1131, F.S.: Reverses prior law to provide that a contract for the sale or purchase of a security is not subject to the Statute of Frauds. The Statute of Frauds provides that a contract for the sale of goods over \$500 must be in writing. The purpose of the revision is to allow the use of electronic filings.

s. 678.1141, F.S.: Adapts the rules of negotiable instruments concerning procedure in actions on negotiable instruments to actions on certificated securities governed by the Chapter.

s. 678.1151, F.S.: Provides that a securities intermediary who has followed the instructions of its customer or principle is not liable to an adverse claimant of the security, unless the intermediary acted illegally (i.e. knew that the security was stolen, or ignored a restraining order against selling the security).

s. 678.1161, F.S.: Clarifies that a securities intermediary that receives a financial asset and establishes a security entitlement in favor of an entitlement holder is a “purchaser” of the financial asset. The section also clarifies that by establishing a security entitlement in favor of an entitlement holder, the securities intermediary gives value for any corresponding financial asset that the securities intermediary receives or acquires.

Section 2. Creates Part II of Chapter 678, F.S., which consists of ss. 678.2011, 678.2021, 678.2031, 678.2041, 678.2051, 678.2061, 678.2071, 678.2081, 678.2091, 678.2101, F.S., and addresses the issuing and issuers of securities, as follows:

s. 678.2011, F.S.: Defines “issuer” and the extent of an issuer’s obligation to guarantee securities.

s. 678.2021, F.S.: Provides that a purchaser for value is not charged with notice of a defect in the validity of a security. Absent constitutional violation, any security is valid in the hands of the purchaser for value, unless the issuer is a governmental entity. Sets forth the rights of a purchaser of a security against its issuer.

s. 678.2031, F.S.: Establishes situations in which, regarding matured or called securities, a purchaser is charged with notice of any defect in the security or of any defense of the issuer.

s. 678.2041, F.S.: Provides that even a lawful restriction on the transfer of a security is ineffective if the transferor did not know of the restriction, unless the restriction was clearly noted on the certificate, or the registered owner was notified of the restriction.

s. 678.2051, F.S.: Provides that an unauthorized signature on a security certificate is read in favor of the purchaser for value against the issuer. This section is based on the issuer's duty to avoid negligently entrusting unauthorized persons with securities.

s. 678.2061, F.S.: Provides that once a security certificate is properly signed, any blank spaces that are subsequently completed by anyone, even if incorrectly, are enforceable by any purchasers for value.

s. 678.2071, F.S.: Sets forth the rights and duties of an issuer with respect to the security's registered owners.

s. 678.2081, F.S.: Sets forth that a person signing a security certificate on behalf of an issuer warrants that the certificate is genuine, that the signor's actions are authorized, and that the signor has reasonable grounds to believe what is contained in the face of the document. Outside these warrants, the signor is not responsible for the security's validity.

s. 678.2091, F.S.: Provides that a lien on a security in favor of the issuer must be noted conspicuously on the certificate to be valid against a future purchaser.

s. 678.2101, F.S.: Provides that a person entitled to issue or validation of a security can compel delivery. If delivery would result in overissue, the person is entitled to monetary compensation.

Section 3. Creates Part III, of Chapter 678, F.S., which consists of ss. 678.3011, 678.3021, 678.3031, 678.3041, 678.3051, 678.3061, 678.3071, F.S., and covers transfer of certificated and uncertificated securities, as follows:

s. 678.3011, F.S.: Defines elements necessary for "delivery" of a security.

s. 678.3021, F.S.: Provides that if a security is transferred from one purchaser to another, the purchaser acquires all rights that the transferor had, with the exception of protection from an adverse claim the purchaser knows about that the transferor did not know about.

s. 678.3031, F.S.: Defines a "protected purchaser." A protected purchaser gives value, has no notice of adverse claims, and has control of the security.

s. 678.3041, F.S.: Describes various valid indorsements and their functions, as well as the right of purchasers to indorsement.

s. 678.3051, F.S.: Provides that an instruction is valid when it is initiated by an authorized person, even if someone else completes it incorrectly. An instruction is the notification given to the issuer of an uncertificated security directing that the transfer be registered.

s. 678.3061, F.S.: Explains the warranties implicit in a guaranteeing signature, an indorsement, and an instruction.

s. 678.3071, F.S.: Allows a securities purchaser to ensure that formal requirements such as signature guaranties, proof of authority, transfer tax stamps, etc. will be met.

Section 4. Creates Part IV of Chapter 678, F.S., which consists of ss. 678.4011, 678.4021, 678.4031, 678.4041, 678.4051, 678.4061, and 678.4071, F.S., and discusses registration, as follows:

s. 678.4011, F.S.: Provides that an issuer will register transfers of securities if certain preconditions exist, and that an issuer under a duty to register a transfer is liable for loss resulting from unreasonable delay in registration, or failure or refusal to register the transfer.

s. 678.4021, F.S.: Provides that an issuer is entitled to require reasonable assurances that all indorsements or instructions are effective.

s. 678.4031, F.S.: Sets forth the appropriate process in a situation where a demand is made that an issuer not register or transfer a security, when an instruction or indorsement has been made after a previous demand to not register a transfer was made, and the issuer's responsibilities and liabilities in these situations.

s. 678.4041, F.S.: Sets forth the types of wrongful security transfer registration for which an issuer will be liable.

s. 678.4051, F.S.: Provides when an issuer must replace a lost, destroyed, or wrongfully taken certificate.

s. 678.4061, F.S.: Provides that an owner who fails to notify the issuer within a reasonable time after the owner knows or has reason to know of the loss or theft of a security certificate is prohibited from asserting a claim against the issuer for registering the transfer or for refusing to issue a new security certificate.

s. 678.4071, F.S.: Provides that people acting on behalf of the issuer are expressly held liable to the purchaser regarding the issuing and cancellation of securities.

Section 5. Creates Part V, Chapter 678, F.S., consisting of ss. 678.5011, 678.5021, 678.5031, 678.5041, 678.5051, 678.5061, 678.5071, 678.5081, 678.5091, 678.5101, 678.5111, F.S., relating to security entitlements, as follows:

- s. 678.5011, F.S.:** Provides that a person has a security entitlement when a financial asset has been credited to a securities account.
- s. 678.5021, F.S.:** Protects purchasers from adverse claims if the person bought the security pursuant to s. 678.5011, F.S., and without knowledge of the adverse claim.
- s. 678.5031, F.S.:** Specifies an entitlement holder's property interest in a security asset, and that securities held by a firm for its customers are not general assets of the firm subject to the claims of its creditors.
- s. 678.5041, F.S.:** Provides that a securities intermediary holds financial assets in an amount corresponding to the security entitlements of the intermediary's entitlement holders.
- s. 678.5051, F.S.:** Provides that a securities intermediary has a duty to ensure that any payments or distributions made by the issuer are received by the entitlement holder.
- s. 678.5061, F.S.:** Provides that although the intermediary may have power to exercise corporate and other rights that come with holding a security, the intermediary has a duty to exercise the rights pursuant to an agreement with the holder or, absent an agreement, according to reasonable commercial standards.
- s. 678.5071, F.S.:** Provides when the securities intermediary has a duty to comply with an entitlement order, and how the intermediary must fulfill this duty.
- s. 678.5081, F.S.:** Provides that the securities intermediary has a duty, if requested to do so, to change an entitlement holder's position into any other form of holding for which the entitlement holder is eligible or to transfer the entitlement holder's position to an account at another intermediary.
- s. 678.5091, F.S.:** Specifies the duties of broker-dealers or other securities intermediaries and their customers when other statutes, regulations, rules, or security agreements come into play.
- s. 678.5101, F.S.:** Specifies rules of priority concerning the rights of persons who purchase interests in security entitlement from entitlement holders, if a situation arises that is not covered by Chapter 679.
- s. 678.5111, F.S.:** Sets forth rules of priority if a securities intermediary fails and cannot satisfy both its obligations to entitlement holders of a financial asset and its obligations to creditors who have a security interest in the financial asset.
- Section 6. Amends s. 679.103, F.S., to specify choice of laws rules for the perfection of a security interest in investment property.
- Sections 7, 8, and 11 - 23. Amends ss. 679.105, 679.106, 679.203, 679.301, 679.302, 679.303, 679.304, 679.305, 679.306, 679.309, 679.312, 671.105, 671.206, 674.104, 675.114, F.S., to conform the sections and correctly cross-reference the sections to the provisions of the Act.

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Section 9. Creates s. 679.115, F.S., by defining investment property and setting out the principal definitions and rules of security interests in investment property.

Section 10. Creates s. 679.116, F.S., to establish rules concerning security interest in investment property in order to provide certainty and stability in the securities settlement system.

Section 24. Provides that the act does not affect any action or proceeding commenced prior to the effective date of this act. Also, if a security interest was perfected prior to the effective date of the act, no further action is necessary to maintain the perfected interest.

Section 25. Repeals ss. 610.011, 610.021, 610.031, 610.041, 610.051, 610.061, 610.071, 610.081, 610.091, 610.101, 610.111, 671.304(2)(b), and the current provisions of Chapter 678, F.S.

Section 26: Amends in s. 680.1031, F.S., the definition of "Consumer Lease" and "Finance Lease."

Section 27: Amends s. 680.1041, F.S., by deleting the provision that a lease subject to Chapter 680, F.S., is also subject to federal statutes. Also, this section subjects leases to the final consumer protection decisions of Florida courts existing on the effective date of the act.

Section 28: Amends the provisions affecting transfers of interest, by sublease or otherwise, contained in s. 680.303, F.S. A transfer of interest is allowed unless the transfer is a material violation of the terms of the prime lease and is a ground for default giving rise to damages or other appropriate relief. When a lessor has no remaining significant duties under the lease contract, a transfer of the right of payment would not be a material violation regardless of the terms of the lease contract. However, if the lessor had an affirmative duty under the lease contract, the lessee would have to agree before the right to payment could be transferred. Finally, this section provides that a prohibition of transfer must be in writing in a consumer lease.

Sections 29, 33, and 46: Amends ss. 680.304, 680. 501, and 680.532, F.S., by making technical, grammatical and conforming changes to the language of these sections.

Section 30: Amends s. 680.307, F.S., by providing that a lessor's creditor may repossess leased goods from the lessee if the creditor has a security interest in the goods which was perfected before the lease contract became enforceable, or the lessee received delivery of the goods with knowledge of the creditor's security interest.

Section 31: Amends s. 680.309, F.S., by including the lessor's residual interest in the lessor's interest which is subordinate to the conflicting interest of one who encumbered the real estate before the goods became fixtures of a construction project, if the time the goods became fixtures was before the completion of the construction.

Section 32: Creates s. 680.32, F.S., which provides that no provision in Chapter 680, F.S., prevents anyone with priority in claims from agreeing to subordinate their priority.

Section 34: Substantially rewords s. 680.503, F.S., to allow a lease agreement to include rights and remedies for default in addition to or in lieu of those provided in

Chapter 680, F.S. The lease agreement may limit or alter the measure of damages recoverable under Chapter 680, F.S. Use of the remedies provided in this chapter are optional unless the remedy is expressly agreed by the parties to be exclusive. If the lease agreement provides for an exclusive remedy, but that remedy would fail as to its essential purpose or would unreasonably favor one party over the other, the parties may make use of the remedies contained in Chapter 680, F.S. Consequential damages may be liquidated, limited, altered, or excluded unless this action would favor one side over another. Limitation, alteration, or exclusion in a consumer goods setting is prima facie evidence of favoring one party over the other. Rights and remedies on default by either party are not impaired by Chapter 680, F.S.

Section 35: Amends s. 680.507, F.S., by changing the time on which market rent damages are based from the time of the default to the times specified in ss. 680.519 or 680.528, F.S. (the present value on the date of default of the difference between the then market rent and the original rent, computed for the remaining lease term or the original lease agreement, together with incidental and consequential damages, less expenses saved in consequence of the lessor's default).

Section 36: Amends s. 680.508, F.S., by adding the rights and remedies contained in the lease contract to those a lessee may seek if the lessor defaults (i.e. fails to deliver goods which conform to the terms of the lease contract or rejects the lease agreement, or the lessee rejects delivered goods or justifiably revokes acceptance of goods). The lessee may exercise the rights and remedies in the lease contract or rights and remedies associated with a breach of warranty.

Section 37: Amends the notification provisions of s. 680.516, F.S., by requiring the lessee to notify the supplier of goods, in addition to the lessor, of any default within a reasonable time. A lessee is barred from a remedy against a person who the lessee did not notify.

Section 38: Amends the provisions of s. 680.518, F.S., by allowing the lessee to "cover" by leasing goods which conform to the original lease when the lessor defaults under Chapter 680, F.S., or under an agreement between the parties. The lessee may recover the rent under the new lease term that replaces the time remaining on the original lease agreement, as well as incidental and consequential damages, less money saved because of the default.

Section 39: Amends s. 680.519, F.S., to specify the damages the lessee may recover for nondelivery of goods, for justified rejection of the lease contract by the lessor, or revocation of acceptance by the lessee. The parties may agree to damages other than the damages provided in this section.

Section 40: Amends s. 680.523, F.S., by adding the lessor's remedies if the lessee breaches the lease contract. The lessor may cancel the lease contract, withhold goods and take possession of goods already delivered, stop delivery of goods, dispose of the goods or retain goods and recover damages, or exercise any other right or remedy provided in the lease contract. If the breach does not substantially impair the value of the lease contract, the lessor may only seek damages.

Section 41: Amends s. 680.524, F.S., so that upon a lessee's breach, the lessor's ability to re-lease the goods in question is limited to only those occasions when the lessee's

breach substantially impairs the value of the lease contract or is a default under the agreement of the parties.

Section 42: Amends the lessor's remedy of repossession contained in s. 680.525, F.S., by explaining how the lessor may re-acquire the goods (by choosing a location reasonably convenient to both parties; without judicial process if re-possession is possible without breaching the peace).

Section 43: Amends the provisions of s. 680.527, F.S., by explaining a lessor's ability to sell or re-lease goods when the lessee defaults on the lease agreement. Damages may be measured by taking the present value of the rent due under the new lease and subtracting the present value of rent due under the old lease for the same period of time.

Section 44: Amends s. 680.528, F.S., by explaining how to compute the lessor's damages in a situation where the lessor repossessed and re-leased or sold the goods. The damages are actual damages, which are determined by taking the present value of the rent due under the old lease or sale and subtracting the present value of rent due under the new lease for the same time period.

Section 45: Amends s. 680.529, F.S., by explaining what action a lessor may take for rent on certain items after a lessee's default. For example, concerning goods accepted by the lessee and not repossessed by the lessor or that were damaged once risk of loss passed to the lessee, a lessor may recover the accrued and unpaid rent as of the date of judgment for the lessor, the present value of the rent for the remaining term of the lease agreement, and incidental damages less expenses saved as a result of the default. Concerning goods that the lessor was unable to dispose of after reasonable effort, the lessor can recover the same damages stated in the previous sentence.

Section 46: Amends s. 680.532, F.S. to read that a lessor may recover from a defaulting lessee an amount that will compensate the lessor for the lessor's residual interest in the goods that was lost as a result of the default.

Section 47: Provides that the provisions of this Act do not apply to any existing lease contract entered into prior to the Act's effective date, unless such lease contracts specifically agree in writing that they are governed by applicable law as supplemented or amended.

Section 48: Repeals s. 679.111, F.S., relating to bulk transfers under chapter 676. The 1993 repeal of chapter 676 made s. 679.111, F.S. obsolete.

Section 49: Provides that the Act takes effect on October 1, 1996.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

The Uniform Commercial Code is designed to facilitate commerce among the states by unifying the rules governing these transactions. Removing impediments to trade across state lines should indirectly facilitate competition, and promote increased business activity.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

V. COMMENTS:

The section of the bill modifying Chapter 678, F.S. deals with investment securities under UCC Article 8. It is a product of the Florida Bar Business Law Section and is unchanged from the draft passed by the NCCUSL.

The proposed changes to Chapter 680, F.S. reflect provisions of UCC Article 2A as amended by the NCCUSL in 1990. These are the same proposed changes approved by the Committee on Commerce during the last two Regular Sessions of the Legislature.

In the 1996 Session, the bill was withdrawn from the Committees on Commerce and Appropriations and placed on the House Calendar. The bill was amended and passed on the Consent Calendar on April 26, 1996. The bill died in Senate messages on May 3, 1996.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

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VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

Prepared by:

Legislative Research Director:

Hilary E. Coggins

Stephen T. Hogge